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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 607.

GREATER BATON ROUGE PORT COMMISSION and CARGILL, INCORPORATED,

Petitioners,

v.

UNITED STATES OF AMERICA and FEDERAL MARITIME BOARD,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION.

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This Reply to the Brief in Opposition is filed under subdivision 4 of Rule 24 of the Revised Rules of this Court.

I.

On the issue of exclusive jurisdiction of the Secretary of Agriculture, the error in the Brief in Opposition begins with a misstatement of the questions presented. In stating the first question as relating to the "maritime functions" of a port terminal grain elevator, the Government loses sight of the fact that Agreement 8225 (Petition p. 3) does

not relate to "maritime functions". It is only Agreement 8225-1 covering stevedoring (Petition p. 4) which relates to what may be claimed to be "maritime functions" (Petition pp. 8-9).

The Brief in Opposition cites only two decisions on exclusive jurisdiction, namely, *Baltimore & Ohio R. Co.* v. *United States*, 201 F. 2d 795 (3d Cir. 1953) and *Charles of the Ritz Distributors Corp.* v. *FTC*, 143 F. 2d 676 (2d Cir. 1944). Most significantly, neither case deals with attempted dual regulation where Congress has made one of the regulatory statutes **exclusive**. In the *Baltimore & Ohio* case, dealing with dual regulation by the Federal Maritime Board and the Interstate Commerce Commission, the Court points out that the Interstate Commerce Act expressly contemplates (49 U. S. C. §920(b)(3)) joint jurisdiction of the Federal Maritime Board (261 F. 2d at 796). The *Charles of the Ritz* case is even more inapposite: the dual jurisdiction of the Food, Drug and Cosmetic Administration and the Federal Trade Commission over cosmetic labeling and advertising was delineated by the 75th Congress in its enactment in the same session of the Food, Drug and Cosmetic Act (21 U. S. C. Sec. 301, *et seq.*) and the Wheeler-Lee food, drug and cosmetic amendments to the Federal Trade Commission Act (15 U. S. C. Sec. 41, *et al.*), with many expressions in the legislative history indicating that duality of regulation was intended by Congress.

The Petition herein should be granted to require the Commission and the Court below to give full weight to the fact that in the United States Warehouse Act (7 U. S. C. 241, *et seq.*) Congress in specific and unmistakable language said:

> "• • • the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this

Act shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect".

II.

The Brief in Opposition completely misses the point made in the Petition with respect to the serious error involved on the part of the Court below in the failure to grant the Petition for Rehearing. The argument in the Brief in Opposition is restricted to the contention that failure heretofore to enforce Section 15 of the Shipping Act as a penal statute does not make the penal provisions "any less enforceable" now (Brief, p. 13). The Petition did not argue that the penal provisions of Section 15 are not now enforceable. Our point is that the retroactive application of these heavy penalties now attempted against Petitioner Cargill makes it imperative to utilize restrictive rules of construction in the application of Section 15 to the facts of our case, rather than the liberal rules of interpretation which are properly applicable only with respect to purely remedial statutes.

The Petition should be granted to require the Commission and the Court below to give proper consideration, on the basis of the correct rules of construction, to the risk of substantial penalties faced by Petitioners and others

similarly situated, because of the unanticipated dual regulation and penal liability now being imposed for the first time.

Dated:
January 15, 1962.

Respectfully submitted,

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